

EX PARTE OR LATE FILED

~~DOCKET FILE COPY FOR LATE~~

DOCKET FILE COPY ORIGINAL

February 4, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

FEB - 7 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation

GEN Docket No. 90-314*
Personal Communications Services

CC Docket No. 90-358
Cellular License Renewals

Dear Mr. Caton:

On Friday, February 4, 1994, Thomas E. Wheeler, President and CEO of the Cellular Telecommunications Industry Association, met with Ms. Karen Brinkman, Legal Advisor to Chairman Reed E. Hundt, to discuss the pending issues in the above-captioned proceedings. The views expressed in this meeting reflected the position set forth in CTIA's comments in these proceedings.

The attached written ex parte presentation was left with Ms. Brinkman and sets forth the substance of the views expressed in connection with CC Docket No. 90-358.

Pursuant to section 1.1206(a)(1) of the Commission's rules, an original and one copy of this filing are being filed with your office.

If there are any questions concerning this submission, please contact me at (202) 785-0081.

Sincerely,



Michael Altschul

cc: Karen Brinkman



CTIA

Cellular
Telecommunications
Industry Association
1133 21st Street, NW
Third Floor
Washington, DC 20036
202-785-0081 Telephone
202-785-0721 Fax

Building The
Wireless Future.

Michael F. Altschul
Vice President,
General Counsel

No. of Copies rec'd
List ABCDE

0+2

RECEIVED

Before the
Federal Communications Commission
Washington, D.C. 20554

FEB - 7 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

DOCKET FILE COPY ORIGINAL

Amendment of Part 22 of the
Commission's Rules Relating
to License Renewals in the
Domestic Public Cellular Radio
Telecommunications Service

CC Docket No. 90-358

Ex Parte Presentation of the
Cellular Telecommunications Industry Association

PENDING ISSUES ON RECONSIDERATION

On December 23, 1993, the United States Court of Appeals for the District of Columbia dismissed the appeals filed by the National Cellular Resellers Association of the Commission's Memorandum Opinion and Order on Reconsideration in the above-captioned proceeding, 8 FCC Rcd 2834 (1993) ("Reconsideration Order"). Now that the appeal of the Reconsideration Order has been dismissed, the only cellular renewal issues pending before the Commission are the issues raised in the unopposed petitions for clarification and further reconsideration filed May 26, 1993, by BellSouth/GTE and US WEST/NewVector. These issues are limited to interpreting the proper scope of Footnote Six of the Reconsideration Order, and a few technical issues that can easily be resolved.

On October 1, 1993, the first 28 cellular licenses expired. The incumbent cellular licensees timely filed their FCC Form 405 renewal applications. No competing applications were filed; therefore, these renewal applications are awaiting Commission action as soon as this proceeding is concluded. An additional 66 cellular licenses will expire on October 1, 1994. To permit the expeditious processing of cellular renewal applications, we urge the Commission to finalize its renewal rules by completing work on the issues summarized below.

Footnote Six

Section 22.13 already requires Part 22 applicants to identify all parties in interest and to provide relevant basic qualifying information. The Commission should thus retain the first sentence of footnote six which confirms that Renewal Applicants' Form 401 and 405 filings must comply with Section 22.13:

"We wish to remind all applicants that Section 22.13 of our Rules requires an applicant to reveal individuals who own five percent of the stock in a corporate applicant or licensee, as well as subsidiaries and affiliates of the applicant and principals and partners of the applicant."

Reconsideration Order, 8 FCC Rcd at 2835 n.6.

The remainder of the footnote, however, should be eliminated in so far as it goes beyond the information previously submitted by applicants regarding basic licensee qualifications and seeks a detailed listing of FCC and non-FCC misconduct at the application stage of the renewal proceeding, when the FCC Forms 401 and 405 are filed.

To the extent that the Commission wants to impose additional character qualifications reporting burdens on cellular renewal applicants, it should do so at the renewal expectancy stage of the proceeding. The scope of the reporting requirement should be limited to adjudicated misconduct relevant to the renewal expectancy determination. In this regard, the pending petitions raise several issues regarding the content of the applicant's renewal reporting requirement.

Other Issues

The petitions raise a few additional issues that the Commission should revise or clarify on reconsideration:

Step-one Threshold Renewal Expectancy Hearing Procedures

The Commission should specify the procedures to be followed in step-one threshold renewal expectancy hearings. It expressly should provide for the filing of affirmative direct and rebuttal cases, and dispense with the current requirement that the renewal expectancy showing be filed 30 days after public notice of the filing of competing applications. Direct cases (i.e., the renewal expectancy showing) should be due within the same time frame established for step-two hearings (90 days after release of the hearing designation order; rebuttal cases should be due 30 days after filing of the direct case). The expedited hearing procedures contained in 47 C.F.R. § 22.916(b)(5)-(8) should apply.

Step-one Waivers

Step-one waiver requests should be due when the competing application is due. This is consistent with the instructions in FCC Form 401 and with the requirement that decisions regarding waiver requests precede issuance of the hearing designation order. The Commission should establish that licensees may respond to waiver requests when petitions to deny the challenger's application are due. Also, the rules expressly should provide that the

challenger's application and any waiver requests filed with the Commission should be served on the licensee. The current rules contain no provision on these points.

Renewal Expectancy

The step-one waiver appears to be limited to waiver of the step-one hearing procedure, and not to any waiver of consideration of the renewal expectancy issue in step-two comparative proceedings. However, it is not entirely clear from the rule whether a separate renewal expectancy issue will be designated for step-two hearings, and whether the renewal expectancy issue, once designated, will remain the "most important comparative factor" in deciding step-two comparative cases. The Commission should confirm that the renewal expectancy issue will be considered in step-two comparative hearings held as a result of Section 22.942(d) "far exceeds" waiver grants. The Commission also should confirm that the renewal expectancy will remain the most important comparative factor in deciding the case, as provided for in Section 22.941(a).

Non-FCC Misconduct

The Commission should delete the non-FCC misconduct reference contained in Section 22.941(b)(4) in light of its deletion of the non-FCC misconduct renewal expectancy criterion. See Reconsideration Order, 8 FCC Rcd at 2835 ("[w]e agree with petitioners that if such "relevant non-FCC misconduct" does not warrant disqualification of a licensee, it should not be considered in determining whether a licensee deserves a renewal expectancy").

Unserved Area Applications

The Commission should clarify that unserved area applications and grants are irrelevant to the cellular renewal process. The Reconsideration Order recognizes that unserved areas are entirely separate and distinct licensing areas.

EX PARTE OR LATE FILED

RECEIVED

Before the
Federal Communications Commission
Washington, D.C. 20554

FEB - 7 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 22 of the) CC Docket No. 90-358
Commission's Rules Relating)
to License Renewals in the)
Domestic Public Cellular Radio)
Telecommunications Service)

Ex Parte Presentation of the
Cellular Telecommunications Industry Association

PENDING ISSUES ON RECONSIDERATION

On December 23, 1993, the United States Court of Appeals for the District of Columbia dismissed the appeals filed by the National Cellular Resellers Association of the Commission's Memorandum Opinion and Order on Reconsideration in the above-captioned proceeding, 8 FCC Rcd 2834 (1993) ("Reconsideration Order"). Now that the appeal of the Reconsideration Order has been dismissed, the only cellular renewal issues pending before the Commission are the issues raised in the unopposed petitions for clarification and further reconsideration filed May 26, 1993, by BellSouth/GTE and US WEST/NewVector. These issues are limited to interpreting the proper scope of Footnote Six of the Reconsideration Order, and a few technical issues that can easily be resolved.

On October 1, 1993, the first 28 cellular licenses expired. The incumbent cellular licensees timely filed their FCC Form 405 renewal applications. No competing applications were filed; therefore, these renewal applications are awaiting Commission action as soon as this proceeding is concluded. An additional 66 cellular licenses will expire on October 1, 1994. To permit the expeditious processing of cellular renewal applications, we urge the Commission to finalize its renewal rules by completing work on the issues summarized below.

Footnote Six

Section 22.13 already requires Part 22 applicants to identify all parties in interest and to provide relevant basic qualifying information. The Commission should thus retain the first sentence of footnote six which confirms that Renewal Applicants' Form 401 and 405 filings must comply with Section 22.13:

"We wish to remind all applicants that Section 22.13 of our Rules requires an applicant to reveal individuals who own five percent of the stock in a corporate applicant or licensee, as well as subsidiaries and affiliates of the applicant and principals and partners of the applicant."

Reconsideration Order, 8 FCC Rcd at 2835 n.6.

The remainder of the footnote, however, should be eliminated in so far as it goes beyond the information previously submitted by applicants regarding basic licensee qualifications and seeks a detailed listing of FCC and non-FCC misconduct at the application stage of the renewal proceeding, when the FCC Forms 401 and 405 are filed.

To the extent that the Commission wants to impose additional character qualifications reporting burdens on cellular renewal applicants, it should do so at the renewal expectancy stage of the proceeding. The scope of the reporting requirement should be limited to adjudicated misconduct relevant to the renewal expectancy determination. In this regard, the pending petitions raise several issues regarding the content of the applicant's renewal reporting requirement.

Other Issues

The petitions raise a few additional issues that the Commission should revise or clarify on reconsideration:

Step-one Threshold Renewal Expectancy Hearing Procedures

The Commission should specify the procedures to be followed in step-one threshold renewal expectancy hearings. It expressly should provide for the filing of affirmative direct and rebuttal cases, and dispense with the current requirement that the renewal expectancy showing be filed 30 days after public notice of the filing of competing applications. Direct cases (*i.e.*, the renewal expectancy showing) should be due within the same time frame established for step-two hearings (90 days after release of the hearing designation order; rebuttal cases should be due 30 days after filing of the direct case). The expedited hearing procedures contained in 47 C.F.R. § 22.916(b)(5)-(8) should apply.

Step-one Waivers

Step-one waiver requests should be due when the competing application is due. This is consistent with the instructions in FCC Form 401 and with the requirement that decisions regarding waiver requests precede issuance of the hearing designation order. The Commission should establish that licensees may respond to waiver requests when petitions to deny the challenger's application are due. Also, the rules expressly should provide that the

challenger's application and any waiver requests filed with the Commission should be served on the licensee. The current rules contain no provision on these points.

Renewal Expectancy

The step-one waiver appears to be limited to waiver of the step-one hearing procedure, and not to any waiver of consideration of the renewal expectancy issue in step-two comparative proceedings. However, it is not entirely clear from the rule whether a separate renewal expectancy issue will be designated for step-two hearings, and whether the renewal expectancy issue, once designated, will remain the "most important comparative factor" in deciding step-two comparative cases. The Commission should confirm that the renewal expectancy issue will be considered in step-two comparative hearings held as a result of Section 22.942(d) "far exceeds" waiver grants. The Commission also should confirm that the renewal expectancy will remain the most important comparative factor in deciding the case, as provided for in Section 22.941(a).

Non-FCC Misconduct

The Commission should delete the non-FCC misconduct reference contained in Section 22.941(b)(4) in light of its deletion of the non-FCC misconduct renewal expectancy criterion. See Reconsideration Order, 8 FCC Rcd at 2835 ("[w]e agree with petitioners that if such "relevant non-FCC misconduct" does not warrant disqualification of a licensee, it should not be considered in determining whether a licensee deserves a renewal expectancy").

Unserved Area Applications

The Commission should clarify that unserved area applications and grants are irrelevant to the cellular renewal process. The Reconsideration Order recognizes that unserved areas are entirely separate and distinct licensing areas.